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The Special Avionics Mission Strap-on-Now (SAMSON) observation pod, shared by Belgium, Canada, France, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain.

Open Skies: successes and uncertainties of an iconic post-Cold War instrument

by Loïc Simonet

The Treaty on Open Skies was signed on 24 March 1992 in Helsinki within the framework of the Conference on Security and Co-operation in Europe (CSCE) by 26 member States of the Atlantic Alliance (NATO) and the former Warsaw Pact. Following a long period of negotiations, the Treaty entered into force on 1 January 2002. The year 2012 marks the 20th anniversary of the conclusion of this instrument and the tenth anniversary of its entry into force.

The genesis of Open Skies goes back to the year 1955 when Dwight Eisenhower, the then President of the United States, proposed to the Soviet Union the principle of free mutual over-flights

accompanied by an exchange of photographs. In 1989, at the end of the Cold War, President George Bush revived the idea put forward by his predecessor, adopting the proposal by the Canadian Prime Minister, Brian Mulroney, to extend it to include the members of NATO and the Warsaw Pact.

An innovative and unprecedented instrument intimately linked to the OSCE, Open Skies has successfully contributed to building confidence between former adversaries. Its future, however, could well be clouded by the evolution of the security situation in Europe and the priorities of individual States Parties.

THE FIRST MULTILATERAL AERIAL OBSERVATION REGIME

The Open Skies Treaty is not a classic arms control instrument, unlike, for example, its contemporary, the Treaty on Conventional Armed Forces in Europe (CFE). Its purpose is neither to provide a framework for the reduction of existing arsenals nor to limit the activities or military capabilities of the States Parties. It is simply, according to the terms of the preamble, to “promote greater openness and transparency in their military activities”. Its aim is also to “facilitate the monitoring of compliance with existing and future arms control agreements”, among them the CFE Treaty, which it was not possible to supplement with an aerial inspection regime.

The Treaty authorizes the conduct of observation flights using unarmed aircraft equipped with agreed imaging devices, “sensors” according to the terminology of the Treaty. To this end, each State Party is assigned active and passive quotas. The first refer to the number of overflights that the State in question is authorized to conduct, the second to the number of overflights over its territory that it is required to accept. These quotas are calculated according to such parameters as the country’s geographical area, population and also its military, strategic and economic importance. The allocation of these quotas is the subject of negotiations every autumn, with the results confirmed by a decision of the Open Skies Consultative Commission (OSCC), the body responsible for the management and evaluation of the Treaty’s implementation.

The vast majority of the States Parties do not possess equipment of their own suitable for Open Skies purposes, but rather avail themselves of a clause in the Treaty that permits each to use the facilities of another, under the terms of a mutually agreed arrangement. In actual practice, States Parties frequently join together to carry out joint observation flights for the purpose of making optimum use of their resources. Only Belarus and the Russian Federation, on the one hand, and Benelux (Belgium, Netherlands and Luxembourg), on the other, have availed themselves of the opportunity provided by Article III, Section II for two or more States Parties to form a group for the purpose of co-operation. Without actually constituting a group within the terms of the Treaty, Belgium, Canada, France, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain co-operate technically within the so-called Pod Group, sharing a unique modular surveillance system, the SAMSON (Special Avionics Mission Strap-On-Now) observation pod equipped with five imaging devices, which they rotate among their national aircraft.

An Open Skies mission is preceded by a notification given three days (72 hours) in advance. The country whose territory is to be overflown must acknowledge receipt of the notification within 24 hours. The notification includes the designation of the “point of entry”, i.e., one of the locations specified by the observed Party for the arrival of the personnel of the observing Party on its territory and, where appropriate, the “Open Skies airfield” designated by the observed Party as the point where the observation flight is to commence and terminate. All the other States Parties are also notified for purposes of information.

The route is freely chosen by the observing Party. The entire territory of a State Party may be overflown with the exception of a ten-kilometre zone bordering on a country that is not a party to the Treaty. The maximum duration of a mission is 96 hours. The mission report, drawn up by the observing Party, is signed by the observing and observed Parties and is communicated within seven days to all the other States Parties.

The facilities observed may include, among other things, military bases, training sites, industrial centres, roads, rail and communication infrastructures, airports and port terminals as well as any heavy equipment (tanks, aircraft and missile-launching sites). The photographs taken during each mission are distributed among the observing and the observed Parties, after which they are made available against payment to any State Party that so requests.

HISTORIC TIES TO THE OSCE

The negotiations that preceded the signing of the Treaty on Open Skies began in Ottawa in February 1990, outside the CSCE. Nevertheless, after a second session in Budapest in September 1991, the CSCE/OSCE headquarters in Vienna became the fixed place for discussions, leading to the establishment of a practically indissoluble link between the Organization and the Treaty.

The Open Skies Treaty’s area of application corresponds, by and large, to the area of the OSCE. Its provisions, like those of the OSCE’s Vienna Document, are what are referred to in the latter as confidence- and security-building measures. There are many references to the CSCE in the text of the Treaty. It is one of the cornerstones of the “new Europe” established by the 1975 Helsinki Final Act and the 1990 Charter of Paris.

The OSCC meets every month in plenary session in Vienna, using the facilities and drawing on the administrative support of the OSCE Conflict Prevention Centre, as provided for in Article X of the Treaty. Two Open Skies Treaty Review Conferences have been held in Vienna, the first from 14 to 16 February 2005, the second from 7 to 9 June 2010.



The SAMSON observation pod

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A team working in the observation console

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AN UNCERTAIN FUTURE

Twenty years after its signing, the Treaty on Open Skies has lived up to its intended purpose. It has been a significant source of military and strategic information and has promoted a culture of co-operation between what used to be rival armed forces and their personnel. As of December 2011, a total of 836 flights had been carried out. Beyond this undeniably positive record, however, does the Treaty on Open Skies still have a *raison d'être* in the twenty-first century?

The Open Skies regime is a product of the final years of the Cold War. It was conceived and put into practice during a period of considerable change in the security environment of the Euro-Atlantic region. It is interesting to note that the symptoms that are affecting the Treaty today — the evolution of the geostrategic context, the lessening of the threat of a large-scale conventional attack and a significant reduction in the size of armed forces since 1990 — are the same as those undermining the CFE Treaty, the latter being subject to more serious political antagonisms. States are accorded priority to combating transnational threats such as terrorism or cybercrime, which are the work of non-State actors and therefore beyond the reach of legal instruments, of which the Open Skies Treaty is one. Ever more severe financial constraints are making the investment that is necessary for the application of the Treaty difficult to justify in the eyes of governments. A number of States Parties no longer make use of their active quotas and limit their engagement to allowing other States to overfly their territory if they so wish.

From a technical point of view, the rapid advances achieved in satellite imagery are making the Open Skies

regime less and less viable, even if it continues to offer a considerable degree of flexibility in comparison with satellite observation (in particular by making it possible to record images beneath a cloud cover) and is less costly than satellite technology.

NEW APPLICATIONS?

In view of this situation, several possibilities have been considered in recent years for the “reconversion” of a regime that could be headed for stagnation.

The strengthening of the “dual purpose” aspect of Open Skies and the expansion of its missions outside the area of military observation have long been seen as the principal option. The preamble of the Treaty envisages “the possible extension of the Open Skies regime into additional fields, such as the protection of the environment”. The regime is in fact well suited to the evaluation of trans-border environmental damage. As early as 2004, an OSCC seminar was held in Vienna on the environmental applications of the Treaty.

During the initial negotiations of the Treaty in Ottawa and Budapest, the future States Parties decided to include in its preamble a reference to the possibility of using a regime of its kind for conflict prevention and crisis management, albeit only after lengthy discussions about the appropriateness of applying an instrument designed essentially to strengthen confidence and transparency between East and West to the management of regional crises. Annex L to the Treaty (Section III) stipulates that the OSCC shall consider requests from the CSCE/OSCE and other relevant international bodies for facilitating extraordinary observation flights over the territory of a

State Party with its consent for purposes of conflict prevention and crisis management. During the first Treaty Review Conference in 2005, three States Parties proposed that these provisions could be used as an instrument of preventive diplomacy for the resolution of protracted conflicts. However, in view of the vulnerability of observation aircraft, unarmed and flying at a low altitude (less than 5,000 metres) and at a fairly low speed (around 450 km/h), they recommended that the Open Skies regime not be used for these purposes except in a stable security environment.

The use of Open Skies to combat trafficking in human beings, arms and drugs, to observe the movement of refugees, to combat clandestine immigration or to monitor border regions has been proposed from time to time. Its potential regarding transnational or “new” threats would warrant study. It has also been suggested that this instrument be used for the detection of illicit activities aimed at obtaining nuclear weapons (stockpiling of fissile material and enrichment of uranium). For the time being, these ideas have evoked only limited interest. They seem too much like attempts to ensure the “viability” of Open Skies at the price of sacrificing its identity as a regime designed above all for a politico-military framework. Furthermore, any application of these ideas would have to overcome the problem of increasingly severe financial restrictions.

Expanding the Open Skies regime to include more States Parties, possibly also in other parts of the world, is also seen as a way of reviving it. Several countries have indeed acceded to the Treaty since its entry into force in 2002. But this expansion has been marking time since the middle of the last decade, and to this day the idea of merging the map of the Open Skies regime with that of the OSCE remains wishful thinking. Nevertheless, the extension of this arrangement to the entire OSCE area would open up new prospects for co-operation. Some of the participating States that might accede to the Treaty are the theatre of “protracted” conflicts or latent tensions, which would provide the observation capabilities of the Open Skies regime with a new potential area of application, as mentioned above.

The co-operation between the States Parties to the Treaty on Open Skies and other international organizations, also suggested in the preamble of the Treaty, has never been truly put into practice. Organizations such as the United Nations, the Organisation for the Prohibition of Chemical Weapons, the Comprehensive Nuclear-Test-Ban Treaty Organization or the International Atomic Energy Agency could benefit from Open Skies, for example by addressing a request to a member State for the conduct of an observation flight or by requesting it to transmit certain images. The OSCE Conflict Prevention Centre, in managing the Organization’s field missions, would undoubtedly benefit from aerial images provided by observation flights.

In light of the “Arab Spring”, the question arises: could the Open Skies regime be applied in other regional contexts?

During the first Treaty Review Conference in 2005, the States Parties declared themselves ready to engage in dialogue with other interested countries, to share their experiences and general information on the Treaty and its

advantages and also to provide support and advice for co-operative aerial observations. It has thus been mentioned that Open Skies could be of interest to India and Pakistan, for example, to help them to resolve their dispute over Kashmir, or to the two Koreas, who might find in aerial observations of the demilitarized zone separating them a useful tool facilitating dialogue. The relatively gloomy context that currently surrounds Open Skies would not seem to encourage its extension beyond the OSCE area for the time being, however.

The States Parties’ unanimous support for the Open Skies Treaty during the two Treaty Review Conferences, in 2005 and 2010, cannot hide the reality that because of the new security situation in Europe, the regime could be threatened with marginalization. Although so far left intact, despite the political tensions that have affected, for example, the CFE Treaty, the Open Skies regime is not totally immune to those tensions, as demonstrated by the discussions within the OSCE on the accession of one participating State of the OSCE.

Nevertheless, more than any other arms control regime developed since the end of the Cold War, the Treaty on Open Skies embodies not only the concept of co-operative security established by the OSCE, but also the “magical moment” — to use the words of Brian Mulroney — of the opening of the Iron Curtain, a moment that is already beginning to fade in our collective memory. It is not at all certain that the time has arrived to close this book, in which other chapters may remain to be written, in a Europe that is not yet completely shielded from the shocks of history.

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The views expressed in this article are those of the author alone and do not necessarily reflect the official position of the OSCE and its participating States.